

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

RICHARD NOLL,

CASE NO. 5:CV 11-04585-EJD

Plaintiff,

**ORDER GRANTING RHYTHM MOTOR
SPORTS LLC'S MOTION TO
INTERVENE AND DENYING
DEFENDANTS' MOTION TO DISMISS AS
MOOT**

v.

EBAY, INC., ET AL,

Defendants.

[Re: Docket Item Nos. 69, 70]

Presently before the court are Rhythm Motor Sports LLC's ("Rhythm") motion to intervene, for joinder and/or for substitution *pro tanto*, and Defendants Ebay Inc., Ebay Europe S.A.R.L. and Ebay International AG's (collectively "Defendants") motion to dismiss Plaintiff's first amended complaint. Having reviewed the parties' arguments, the court GRANTS Rhythm Motor Sports LLC's motion to intervene, and DENIES Defendants' motion to dismiss as moot.

I. Motion to Intervene

Rhythm seeks to intervene as a matter of right under Fed. R. Civ. Proc. 24(a), or in the alternative, permission to intervene under Fed. R. Civ. Proc. 24(b). Defendants submit a statement of partial non-opposition, in which they agree to add Rhythm as a plaintiff party "subject to eBay's position...that Rhythm's claims will be subject to the filing date of the consolidated complaint and will not relate back to the initial filing date of Mr. Noll's complaint in this case." The court declines to accept Defendants' condition. The determination of whether Rhythm's claims should relate back

to the initial filing date is not an appropriate consideration at this stage in the litigation. Defendants may pursue a statute of limitations defense as to Rhythm through dispositive motions and, if necessary, trial. Though styled as only a partial non-opposition, Defendants' statement put forth no argument suggesting that Rhythm should not be permitted to intervene. Therefore, the court GRANTS Rhythm's motion to intervene.

II. Motion to Dismiss

Also before the court is Defendants' motion to dismiss Plaintiff's first amended complaint. This motion is moot given the court's decision on Rhythm's motion to intervene. Defendants may file a revised motion to dismiss after Plaintiffs have filed their consolidated complaint.

III. Conclusion

For the foregoing reasons, the court GRANTS Rhythm's motion to intervene, and DENIES Defendants' motion to dismiss as moot.

Rhythm shall file its complaint in intervention as a separate docket entry on PACER/ECF no later than September 18, 2012.

Plaintiffs shall file a consolidated complaint no later than October 2, 2012.

IT IS SO ORDERED.

Dated: September 4, 2012


EDWARD J. DAVILA
United States District Judge